

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JUANITA GARCIA, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

NATIONSTAR MORTGAGE LLC, a Delaware
Limited Liability Company,

Defendants.

Case No. 2:15-cv-01808-TSZ

DECLARATION OF IAN MENSHER
IN SUPPORT OF CLASS MEMBER
SHERLIE CHARLOT'S JOINDER IN
PLAINTIFF'S STATEMENT REGARDING
SCOPE OF RELEASE IN PROPOSED CLASS
ACTION SETTLEMENT

I, Ian Mensher, hereby declare as follows:

1. I am an attorney with Keller Rohrback L.L.P., and I represent Sherlie Charlot. I am a member of the bar of Washington State and admitted to practice in this District. I have personal knowledge of the matters set forth in this declaration and I am competent to testify to the matters stated herein.

2. Ms. Charlot is a named plaintiff in a proposed class action case filed in the United States District Court for the Eastern District of California. *See Contreras v. Nationstar Mortg. LLC*, No. 2:16-cv-00302-MCE-EFB (E.D. Cal.). The case was filed on February 12, 2016.

DECLARATION OF IAN MENSHER
(Case No. 2:15-CV-01808-TSZ) - 1

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1 3. Keller Rohrbach L.L.P. (“KR”) and Hagens Berman Sobol Shapiro LLP (“HBSS”) are
2 co-counsel for Ms. Charlot and the proposed classes in the *Contreras* case. I am counsel of record in the
3 *Contreras* action. Along with Ms. Charlot, KR and HBSS represent several other named plaintiffs in the
4 *Contreras* matter. These plaintiffs collectively seek to represent several classes of mortgagors who have
5 paid allegedly improper fees, including “convenience fees” (also known as “pay-to-pay fees”), as well as
6 other fees related to property inspections and other mortgage servicing activities.
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8 4. As part of the Rule 26(f) conference that the parties held in the *Contreras* matter in
9 November 2017, counsel for Nationstar, Erik Kemp, represented that no cases related to the *Contreras*
10 matter existed. The parties filed a joint status report confirming the same. From that point forward, I and
11 my colleagues relied on Mr. Kemp’s misrepresentation that no such case existed. I and my colleagues
12 were unaware that this case—*Garcia v. Nationstar Mortg. LLC*, No. 2:15-cv-01808-TSZ (W.D.
13 Wash.)—had been filed.
14

15 5. On October 9, 2018, I became aware of the *Garcia* case and that there was a settlement
16 pending final approval. I reviewed the Settlement Agreement entered into between the *Garcia* parties,
17 including the release.
18

19 6. On October 10, 2018, I held a telephone conference with Mr. Kemp and his colleague,
20 Kalama Lui-Kwan. I was joined on the call by Gretchen Obrist of KR, and Tom Loeser of HBSS. On the
21 call, Mr. Kemp disclosed that he had been counsel for Defendant Nationstar from the outset of the
22 *Garcia* case and that the *Garcia* and *Contreras* cases involve the same “convenience fee.” He conceded
23 the cases are related and that there is overlap between the *Garcia* and *Contreras* classes and that the
24 class settlement in *Garcia* would impact the classes Ms. Charlot and her co-plaintiffs seek to represent
25 in the *Contreras* matter.
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1 7. On the October 10, 2018 call, we also asked Mr. Kemp why he did not inform us about
2 the *Garcia* case when we had our Rule 26(f) conference in November 2017. He stated that he did not
3 believe he was required to disclose the *Garcia* case under the Local Rules of Practice for the United
4 States District Court, Eastern District of California.

5 8. On the October 10, 2018 call, we also asked Mr. Kemp whether he had intended to
6 inform us at any time that the *Garcia* matter existed. He told us that he did, but only *after* this Court
7 entered final approval of the class settlement in *Garcia*.

8 9. On the October 10, 2018 call, we also asked Mr. Kemp, among other things, whether his
9 client would stipulate to a carve-out for our clients and class case (with a potential offset for any persons
10 who filed a claim in the *Garcia* settlement). Mr. Kemp stated that he did not believe his client would
11 agree to a carve-out of the *Garcia* release to allow overlapping class members to participate in both the
12 *Garcia* and *Contreras* cases. Mr. Kemp stated that he didn't believe his client would agree because
13 Nationstar wants the release read and applied as broadly as possible.

14 10. On October 11, 2018, I, Tom Loeser and Gretchen Obrist spoke with counsel for Ms.
15 Garcia by phone about the scope of the Release in the Settlement Agreement and a potential solution for
16 its overbreadth in light of Nationstar counsel's representations and position. Showing great cooperation,
17 counsel for Ms. Garcia agreed to work with counsel for Nationstar to provide clarity on the scope of the
18 Release and to ensure that my clients and potential class members in the *Contreras* matter were not
19 releasing any uncompensated claims through the *Garcia* settlement.

20 11. On October 15, 2018, counsel for Ms. Garcia provided us with a copy of their draft
21 Statement Regarding Scope of Release in Proposed Class Action Settlement ("Statement") which was
22 styled as a joint statement with Nationstar. We provided edits to the document with the hope that
23 Nationstar would join in it. But later that same day counsel for Ms. Garcia informed us that Nationstar

1 would not join in the Statement. We thanked counsel for preparing the Statement and for their efforts in
2 seeking Nationstar's joinder. We made clear our position that Nationstar's non-opposition was
3 inadequate because the Statement needed to have Nationstar's full joinder and signature for it to be
4 binding.

5 12. On the evening of October 15, 2018, Gretchen Obrist and I left a voicemail with Mr.
6 Kemp to discuss Nationstar's position. Mr. Kemp has not returned the call.

7 13. Prior to filing Ms. Charlot's Joinder, I provided Ms. Garcia's counsel with a draft of the
8 Joinder, my declaration, and the proposed order.
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11 I declare under the penalty of perjury under the laws of the United States that for foregoing is
12 true and correct.

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14 DATED this 16th day of October, 2018 at Seattle, Washington.

15 *s/Ian Mensher*

16 Ian Mensher
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CERTIFICATE OF SERVICE

I hereby certify that on October 16, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which in turn sent notice to the following counsel of record:

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(Case No. 2:15-CV-01808-TSZ) - 5

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